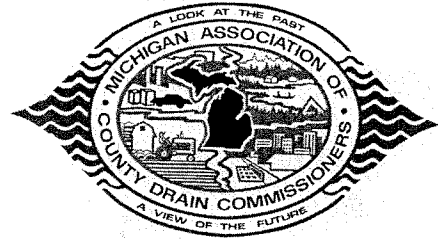


Memorandum



DATE: December 12, 2005
TO: House Standing Committee on Government Operations
FROM: MACDC
RE: Senate Joint Resolution E

The Michigan Association of County Drain Commissioners (MACDC) opposes Senate Joint Resolution E (Substitute S-2) as currently drafted. The Bill has been sent out to the House Committee on Governmental Operations.

Article 10, Section 2 of the 1963 State Constitution provides that “[p]rivate property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law.” Joint Resolution E (S-2), if passed, would be submitted to voters at the next general election. The proposed amendments to the Constitution would require that property owners whose principal residence is subject to condemnation be entitled to **“not less than 125% of [their] property’s fair market value”** as just compensation. (Emphasis added.)

In addition, Joint Resolution E (S-2) would require the condemning authority to demonstrate by the preponderance of the evidence that the taking of private property is for public use.

CONCERNS

The MACDC is concerned that, under this amendment, taxpayers assessed in a drainage district would be forced to pay significantly more compensation than what property is worth in order to proceed with a condemnation action. This would greatly increase the cost of drain projects to the detriment of drainage districts across the State. It would also create a greater tax burden on the residents of a Drainage District, since any costs associated with condemnation of property for a drain project are specially assessed to the property owners in the Drainage District.

Furthermore, MACDC’s position is that 125% is an arbitrary and unreasonable bonus to be paid to private property owners where the current law of the State is that just compensation should not enrich the individual at the expense of the public. Currently, pursuant to the Uniform Condemnation Procedures Act, just compensation is determined based on an appraisal of the

property by the condemning authority. Landowners can challenge the appraisal and argue highest and best use of the property.

In addition, the preponderance of the evidence standard proposed in the resolution is in conflict with the standard set forth in the Uniform Condemnation Procedures Act, used when filing a Statement of Necessity of taking. The standard is set forth as follows: "With respect to an acquisition by a public agency, the determination of public necessity by that agency is binding on the court in the absence of a showing of fraud, error of law or abuse of discretion" (MCL 213.56(2)).

We recommend that language requiring that a property owner be entitled to 125% of their property's fair market value be deleted from the resolution. We also recommend that the language MACDC previously proposed for SB 693 be incorporated into the resolution to ensure that the preponderance of the evidence standard be limited only to circumstances when the taking involves the transfer of property to a private entity.

MACDC opposes the current language of Senate Joint Resolution E (Substitute S-2), because of the significant negative economic impact it may have on County Drain Commissioners and because of the increased tax burden it would pose to the property owners within a drainage district when it is necessary to condemn property for a drain project. We would be happy to discuss our concerns with members of the Legislature.